IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22/06/2004

CORAM

THE HONOURABLE MR.JUSTICE N.DHINAKAR
AND
THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.A.No.172 of 2001

1. Thambu @ Suthas
2. Baskaran .. Appellants

-Vs-

State rep. by
Inspector of Police
Sattur Police Station
Cr.No.54/98 .. Respondent

This criminal appeal is preferred under Sec.374 of the Code of Criminal Procedure against the conviction and sentence imposed upon the appellants by the Principal Sessions Judge, Virudhunagar at Srivilliputhur, in S.C.No.1 of 1999 dated 19.1.2001.

For Appellants : Mr.V.Gopinath
Senior Counsel
for M/s.L.Mahendran
G.Anantharangan

For Respondent : Mr.S.Jayakumar
Additional Public Prosecutor

:JUDGMENT

(Judgment of the Court was delivered by M.CHOCKALINGAM, J.)
The appellants/A-1 and A-2, who stood charged, tried and found guilty under Sections 120(b), 449, 302 read with 34 and 392 read with 34 of I.P.C. and awarded a punishment of 6 months Rigorous Imprisonment for the offence under Sec.449 I.P.C., life imprisonment for the offence under Sec.302 read with 34 I.P.C. and 3 years Rigorous Imprisonment for the offence under Sec.392 read with 34 I.P.C., have preferred this appeal. No separate sentence was awarded by the trial Court in respect of the offence under Sec.120(b) I.P.C..
2. The short facts necessary for the disposal of this appeal can be stated thus:
(a) P.W.1 Vanniyarajan and his brother P.W.5 Subramanian along with another brother were the sons of Lakshmithai. After the death of her husband,

Lakshmithai, aged 72 years, was living in Pudhuchoorankudi. P.Ws.1 and 5 were carrying on a Commission Mandy at Virudhunagar. On 30.1.1998 at about 8.30 P.M., one Jayaprakash of that place informed P.Ws.1 and 5 that their mother Lakshmithai was found murdered. On hearing this, P.Ws.1 and 5 rushed over there and found their mother dead, and the steel bureau was broken, and the moneys therein were taken away. P.W.5 was keeping in a rexin bag Rs.14.00 lakhs of Rs.500/- note denomination. It was also found stolen. P.W.1 went over to Sattur Police Station and gave a report.

(b) P.W.25 Gnanaravi, Sub Inspector of Police, reduced the said report into writing and registered a case in Crime No.54 of 1998 under Sections 302 and 380 I.P.C. at about 2330 hours. Ex.P40 First Information Report was despatched to the Court concerned. On coming to know about the registration of the case, P.W.26 Nagasamy, the Inspector of Police, received a copy of the F.I.R., took up the investigation and proceeded to the spot. He made an observation of the place in the presence of witnesses at about 0300 hours on 31.1.1998. An observation mahazar Ex.P2 and a rough sketch Ex.41 were prepared. Inquest was conducted in the presence of panchayatars, and the Investigating Officer prepared Ex.P42 inquest report. M.Os.1, 4 to 14 and 38 were recovered from the place of occurrence under a mahazar Ex.P3. P.W.30 Guru Anand, a photographer, was summoned, and photos were taken at the place of occurrence, and they were marked as M.O.43. A requisition was forwarded to the Sattur Government Hospital through a constable for the conduct of autopsy on the dead body of the deceased.

(c) On receipt of the said requisition, P.W.22 Dr.Pragadheeswaran, attached to the Government Hospital, Sattur, conducted autopsy on 31.1 .1998 at 12.00 P.M. and noted the following injuries:

1) Nail mark seen in half circle 8 mm over right cheek.

2) Greeve like mark of about 1 cc breadth seen over right and left forearm. 4 line over right and 5 line over left. Fading depression of about s cm over and above knees and thighs seen. R.M. absent in both upper limbs and feebly present in both lower limbs. Eye lids closed. Tongue within the mouth. Jaws clenched. Right lower jaw anterior side raw wound in place of tooth found over gums incisor. Heart: About 50 ml of darkened blood seen right side of the heart and left heart empty. Lungs shrunken. Hyoid bone intact.

The Doctor has issued Ex.P34 postmortem certificate and Ex.P35 final report, wherein he has opined that the deceased would appear to have died of asphyxia due to shock.

(d) The Investigating Officer recovered M.O.39 a piece of cigarette, under a mahazar Ex.P43. P.W.27 Balasubramanian, a finger print expert, was called, and he has also taken the finger prints of the culprits, available therein. A team was constituted by the Superintendent of Police, and P.W.29 Abdul Razak, was entrusted with the further investigation of the case. He took up the investigation, and on 29.6.19 98, at Amathur Main Road, when he was engaged in the inspection of the vehicles, he found A-1 coming in hectic speed, stopped and enquired him. On enquiry, he came to know that he was involved in the crime in question. A-1 came forward to give a confessional statement voluntarily, and the same was recorded. The admissible portion of the said confession is marked as Ex.P11. Pursuant to the same, A-1 produced a motorcycle namely Kinetic Honda M.O.16, which was recovered under a mahazar Ex.P12 in the presence of two witnesses. M.Os.17 to 26, gold jewels were also recovered under a mahazar Ex.P13. He also recovered the documents Exs.P15 to

P18 under a mahazar Ex.P14. A motorcycle M.O.15, used by the accused at the time of the occurrence, was also recovered under a mahazar Ex.P19. A-1 was brought to the police station and sent for judicial remand.

(e) A-2 surrendered before the Judicial Magistrate's Court. A requisition was made to the Court for police custody, and accordingly, it was ordered. Pursuant to the same, A-2 was taken to police custody. During the police custody, he was enquired, and he gave a confessional statement, in pursuance of which, he identified a person, from whom M.O.27 a V.C.R., was recovered. On 14.7.1998, A-2 was given police custody again. A-2 gave a confessional statement, the admissible portion of which is marked as Ex.P36. Then, he has taken the police officials and has identified M.O.28 Rs.34,250/-, which was also recovered under a mahazar. M.Os.29 to 34, gold jewels were also recovered under a mahazar Ex.P38 from his house. M.Os.2, 35, 36, and 37 were recovered under Ex.P39 mahazar. Pursuant to an order passed by the Judicial Magistrate, it was intimated to the Sub-Registrar, Red-Hills, not to register any document of conveyance of the property, which came to the knowledge of the investigating agency in respect of the four plots purchased by the accused from and out of the moneys stolen. At the time of investigation, the investigating Officer enquired P.W.15 Rathinasabapathy, the Manager of Palaniappa Palace, Sivakasi, and from the said Palace, records were recovered showing that on the date of occurrence namely 31.1.1998 both the accused have stayed in that lodge in room No.9.

(f) On a requisition made, P.W.28 Leagath Ali, Judicial Magistrate, conducted test identification parade as regards A-1 on 8.7.1998 and in respect of A-2 on 14.7.1998, and the identification parade proceedings were Exs.P56 and P61. On completion of the investigation, the Investigating Officer laid the final report.

3. In order to prove the case, the prosecution has marched 30 witnesses and relied on 72 exhibits and 43 material objects. On completion of the evidence on the side of the prosecution, the accused were questioned under Sec.313 of the Code of Criminal Procedure as to the incriminating circumstances found in the evidence. On the side of the accused, one Madhan was examined as D.W.1, and Exs.D1 and D2 were marked. The trial Court on hearing the rival submissions made and scrutiny of the materials, has taken the view that the charges levelled against the accused were proved beyond reasonable doubt, found them guilty and awarded the punishments referred to above.

4. Advancing his arguments on behalf of the accused, the learned Senior Counsel Mr.V.Gopinath would make the following submissions: The prosecution case is solely rested upon the circumstantial evidence. To start with, according to P.Ws.5 to 8, they have seen both the accused going into and coming out of the house of the deceased on the date of occurrence namely 30.1.1998. But, the statements of these witnesses were recorded on 5.2.1998 belatedly, and no one has spoken about the identity of the accused. From the evidence, it would be clear that these witnesses already knew both the accused. If to be so, there could not have been any impediment for them to tell about the identification of the accused, and in the absence of the same, it casts a doubt whether they would have seen them at all. The lower Court has placed much reliance on the recoveries made from both the accused. It is pertinent to point out that the accused were running

a grocery shop at two places in Madras city and were getting lot of income, and out of them, they purchased the properties both movables namely jewels and also immovable properties, and hence, it cannot be taken as a piece of evidence against the accused or no inference could be drawn against them that the said properties were purchased from and out of the moneys stolen. It is further pertinent to point out that either P.W.1 or P.W.5, the sons of the deceased have claimed any ownership to those jewels, and apart from that, one witness was examined on the side of the defence, who has clearly spoken to the fact that all the jewels were entrusted to him by A-2, and he was keeping them in his custody on his behalf, and thus, it would be clear that those properties belonged to A-2. Even the witnesses examined on the side of the prosecution would clearly speak to the fact that the accused were running a grocery shop in two places in Madras, and there would be sufficient income, and hence, it cannot be taken as a piece of evidence against them. It is also pertinent to note that one of the material objects namely a bureau, according to the prosecution, was recovered from the house of the accused. But, P.W.1 has identified that it was the bureau that was in the bedroom of their mother. The evidence as to the recovery part would be nothing but false. The lower Court should not have given any significance or evidentiary value to the so-called recovery made. That apart, the prosecution further has brought forth the finger print expert's report stating that two finger prints of the accused tally with one what is found in M.O.2 bureau. M.O.2 bureau, according to the prosecution, was recovered from the accused, and not from the place, even according to P.W.1. Therefore, the evidence of the finger print expert cannot also be taken into account. So far as the accused were concerned, they have already got a sufficient motive to foist a case against them, which is evident from the evidence of P.Ws.1 and 5. One of the accused married a harijan girl, and the whole nadar community enraged over the same and were waiting for the opportunity to take revenge on them. Taking advantage of the same, they have implicated the accused falsely, and this has also been spoken to by the witnesses. In such circumstances, the lower Court should have outright rejected the prosecution case and should have acquitted them, since the prosecution has not proved the case and even not proved one circumstance against them, and hence, the judgment of the lower Court has got to be set aside.

5. This Court heard the learned Additional Public Prosecutor on the above contentions.

6. This Court paid its full attention on the rival submissions made and had a thorough scrutiny of the materials available on record.

7. The case of the prosecution is that on the date of occurrence namely 30.1.1998 in between 3.00 P.M. and 5.30 P.M., both the accused went inside the residential house of one Lakshmithai, aged 72 years, the mother of P.Ws.1 and 5, murdered her and took away all the cash found in the steel bureau. According to P.W.5, both P.W.1 and 5 were carrying on a Commission Mandy at Virudhunagar. He went over there. Even in the complaint Ex.P1, P.W.1 has categorically stated that all the materials found therein have also been taken away. P.W.5 has spoken to the fact that he was keeping a rexin bag containing Rs.14.00 lakhs of Rs.500/- note denomination, and the same has also been stolen. Both P.Ws.1 and 5 have given such a statement at the earliest point of time before the Investigating Officer. The defence that was taken before the lower Court and before this Court was the thorough denial of the

same.
8. The first and the foremost attack by the appellants' side assailing the judgment of the lower Court, was that one of the accused married a harijan girl, and the nadar community people were enraged and waiting for the opportunity, and accordingly, they foisted a false case against the accused. According to P.W.6, who belonged to nadar community, just for a period of three months, prior to the occurrence, her son was employed in the shop of A-1 and A-2 at Madras. Hence, the contention of the appellants' side that the whole community was enraged, and they came forward to give false evidence has got to be brushed aside.
9. It is an admitted position that A-1 and A-2 were carrying on grocery business in Madras city in two places. At the time of investigation, the Investigating Officer P.W.29 has enquired P.W.15, the Manager of Palaniappa Lodge at Sivakasi and has also recorded his statement. According to P.W.15, A-2 had stayed in Room No.9 of the said lodge, and he has also signed the register. It is the further evidence of P.W.15 that A-2 has taken the room at 11.30 A.M. on 30.1.1998 and left the room at 9.30 P.M., and apart from A-2, one other man was also staying with him. This would clearly be indicative of the fact that the appellants, who are the residents of Madras city, were nearby the place of occurrence namely at Sivakasi, on the fateful day. P.Ws.6 to 8 have been examined to the fact that on the date of occurrence at about 03.00 P.M., they went inside the house of the deceased and at about 5.30 P.M., they came outside. The contention of the appellants' side is that the witnesses have spoken to the fact that the accused were already known to them; and that on 5.2.1998, they have given statements under Sec.161 Cr.P.C., recorded by the Investigating Officer; but, they have not identified the accused. It is pertinent to note that when they gave statements under Sec.161 Cr.P.C., they have not given the names of the persons concerned. They have stated that both the accused came in a red colour motorbike, stopped over there, went inside the house of the deceased and came out; that the second accused was having a bag in hand; and that A-1 drove the vehicle, while A-2 was a pillion rider. They have also spoken to in the same line before the trial Court. The said motorbike has also been recovered from the accused, pursuant to the confessional statement made by the accused, and it is marked as M.O.15. P.Ws.6 to 8 have identified M.O.15 in the trial Court. Thus, there is clinching evidence pointing to the presence of the accused when the murder has taken place, as projected by the prosecution.
10. P.W.6 has clearly deposed that she has seen A-1, when he was 10 years old, and hence, it can be well inferred that she did not remember any identification of A-1, and on account of that, no identification was given in her earliest statement before the Investigating Officer. After a careful scrutiny of the evidence adduced by the prosecution, this Court is of the considered opinion that though P.Ws.6 and 7 have given the details, they have not mentioned the names of the accused, and the same will not be in any way fatal to the prosecution case. In the instant case, lot of jewels have been recovered from both the accused, and they have been brought forth in evidence. At the time of investigation, number of gold jewels were recovered especially from A-2. It is pertinent to point out that the value of those jewels would be more than lakhs of rupees. At the time when they were marked before the trial Court, there was actually a suggestion by the accused denying the recovery. Even at the time of questioning under Sec.313 Cr.P.C., the accused

have not claimed the jewels as theirs; but, they have denied the recovery itself. It remains to be stated that they have not even filed the petition before the lower Court pending trial or before this Court under Sec.452 Cr.P.C. stating that the properties belonged to them, and they should be handed over to them.

11. The contention of the learned Counsel for the appellants that they were carrying on grocery business in Madras city at two places, and there was every possibility of lot of income, from which they would have purchased the jewels and also the immovable properties cannot be accepted even for a moment in view of the evidence of the bank officials examined on the side of the prosecution as P.Ws.19 and 20. According to P.W.20, the first accused was having Savings Bank account with Canara Bank, Teynampet Branch, and a copy of the statement is marked as Ex.P29. From his evidence it would be very clear that A-1 was having only Rs.4,000/- in his account in the year 1997 and nothing more. A perusal of Ex.P29 would go to show that A-1 has deposited on 9.2.98 Rs.25,000/-, on 11.2.98 Rs.25,000/-, on 2.3.98 Rs.11,000/- and on 25.3.98 Rs.60,000/-, and all these deposits were subsequent to the date of occurrence namely 30.1.1998. The statement pertaining to the Savings Bank account of A-2 with the Central Bank of India, Mylapore Branch, was also brought forth before the trial Court through P. W.19, and the same is marked as Ex.P27, which would clearly indicate that all those huge deposits found therein, have been made subsequent to the occurrence. It is pertinent to point out that the accused were neither income tax assessees. No explanation was forthcoming how they happened to make huge deposits subsequent to the date of occurrence namely 30.1.1998.

12. It remains to be stated that at the time of investigation four documents namely Exs.P15 to 18 were recovered from A-2, and from P.W.1 2, a sum of Rs.34,250/-, given by A-2 by way of an advance money for the purchase of another plot, was also recovered. Exs.P15 to 18 are the documents relating to the purchase of five plots made by A-2. According to P.W.12, the value of each ground w as Rs.70,000/-, and the said five plots were measuring 3 + grounds. Thus, the total value would be Rs.2,45,000/-, and adding the said advance of Rs.34,250/-, it comes to more than Rs.2.75 lakhs. It is pertinent to point out that all these transactions were made and moneys have been paid subsequent to the occurrence. Further an amount of Rs.1.00 lakh was also recovered from A-2 on a particular day. No explanation was forthcoming as to those recoveries. It is pertinent to note that all these recoveries have been clearly proved by the prosecution, and the evidence in that regard remain unshaken, and thus, the recovery has got to be necessarily believed. In the absence of any explanation how they come into possess the jewels of huge value or the purchase of the immovable properties or how they suddenly become financially affluent, there cannot be any impediment to draw an inference under Sec.114(a) of the Evidence Act that the purchases of the immovable properties and jewels were made only from and out of the stolen property namely Rs.14.0 0 lakhs.

13. Apart from the above, the finger print expert has also been taken to the place, where he has taken the finger prints, which were also compared with the finger prints taken from A-1 and A-2 at the time of investigation, and two finger prints were also found tallied. The learned Counsel for the appellants would contend that M.O.2 bureau, according to P.W.1, was the one which was kept in the house of the deceased; that according to P.W.29

Investigating Officer, the said bureau was recovered from the house of the accused, and this would go to show that the recovery part was false. The Court heard the learned Additional Public Prosecutor on this point. It remains to be stated that it was a mistake that has crept in at the time of adducing evidence by the prosecution. The bureau M.O.2 was actually found in the place of occurrence at the time of observation made by the Investigating Officer, which is clearly pointed out in Ex.P2 observation mahazar. At the time when the finger print expert went over to the place, wherefrom, according to the prosecution, the bureau was stolen, he found the bureau there. Thus, it would be clear that it was nothing but a mistake that has crept in at the time of adducing evidence, and the appellants cannot be permitted to take any advantage of the said mistake and to cause injustice to the case.

14. Therefore, from the available evidence, it would be clear that the prosecution has proved the presence of the accused in the place of occurrence through the evidence of P.Ws.6 to 8, and that A-2 along with another person has taken a room in a lodge at Sivakasi on 30.1.19 98 from 11.30 A.M. to 9.30 P.M. through the evidence of P.W.15. That apart, lot of recoveries, which would clearly indicate both movable and immovable properties of higher value, have been brought forth, and no explanation was offered on the side of the defence in that regard. In view of the above, this Court is of the considered opinion that though the case was rested exclusively on the circumstantial evidence, the prosecution has clearly brought forth a chain leading to the hypothesis that it was only the appellants/accused who committed the crime. The Court below was perfectly correct in finding them guilty and in basing a conviction. This Court i s unable to notice anything to interfere in the punishment awarded by the lower Court. Hence, both the conviction and sentence have got to be sustained.

15. In the result, this criminal appeal is dismissed, confirming the judgment of conviction and sentence of the lower Court. In the result, this criminal appeal is dismissed, confirming the judgment of conviction and sentence of the lower Court.

16. It is brought to the notice of the Court that after the disposal of the case by the trial Court, an application was filed by P.W.1 for return of the properties, and it was not given any disposal. Since the appeal is disposed of, P.W.1 is at liberty to move the lower Court for necessary reliefs. The lower Court is also directed to give disposal to the application on merits and in accordance with law.

Index: yes
Internet: yes

nsv/

To:
1. The Principal Sessions Judge, Virudhunagar at Srivilliputhur
2. The District Collector, Virudhunagar District.
3. The D.G.P., Chennai.
4. The Public Prosecutor, Madras.
5. The Superintendent, Central Prison, Madurai.

6. The Inspector of Police, Sathur Police Station.